

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Criminal Action No. 99-7-JJF
v.	:	
	:	Civil Action No. 02-140-JJF
WILLIAM FRAZIER,	:	
	:	
Defendant.	:	

Colm F. Connolly, Esquire, United States Attorney, and Leonard P. Stark, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Clayton A. Sweeney, Jr., Esquire, of CLAYTON A. SWEENEY, JR., ESQUIRE, Philadelphia, Pennsylvania. Attorney for Defendant.

MEMORANDUM OPINION

April 7, 2004

Wilmington, Delaware

FARNAN, District Judge.

Pending before the Court is an Amended Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255 (D.I. 89) filed by Defendant, William Frazier. For the reasons set forth below, Defendant's Amended Motion will be denied.

BACKGROUND

On January 12, 1999, a federal grand jury for the District of Delaware indicted Defendant on one count of Distribution of Cocaine Base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) ("Count One") and one count of Distribution of Cocaine Base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A) ("Count Two"). In July 1999, Defendant was tried by a jury before the Honorable Joseph J. Longobardi. The jury found Defendant guilty on both counts of the Indictment.

Defendant's sentencing hearing began on October 20, 1999, and was continued until December 8, 1999, to allow the Government to obtain proof of Defendant's prior convictions. After the continuance, the Government established Defendant's two prior felony convictions for drug offenses. Defendant was sentenced to a mandatory life sentence on Count Two and a consecutive life sentence on Count One.

Leo John Ramunno, Esquire, represented Defendant throughout the proceedings in the district court. Following sentencing, Mr. Ramunno withdrew, and Penny Marshall, Esquire, the Federal Public

Defender, was appointed to represent Defendant on direct appeal.

Ms. Marshall filed Defendant's direct appeal on December 14, 1999. On June 26, 2000, while Defendant's appeal was pending before the Third Circuit, the United States Supreme Court issued its decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). On October 12, 2000, the Third Circuit affirmed Defendant's convictions and sentence, and on February 20, 2001, the United States Supreme Court denied Defendant's petition for a writ of certiorari.

On February 19, 2002, Defendant, through Ms. Marshall, filed his original Section 2255 Motion (D.I. 67). On July 22, 2002, Ms. Marshall moved to withdraw as counsel for Defendant based on her possible ineffectiveness as appellate counsel (D.I. 74). On August 14, 2002, the Court granted Ms. Marshall's Motion to Withdraw and on August 28, 2002, appointed Clayton A. Sweeney, Jr., Esquire, to represent Defendant.

On October 8, 2002, the Court denied Defendant's original Section 2255 Motion without prejudice. (D.I. 81). On October 17, 2002, Defendant, through Mr. Sweeney, filed a Motion for Reconsideration of the Court's Order Denying his Section 2255 Motion, and on October 31, 2002, Defendant also moved to amend his Section 2255 Motion. On February 13, 2003, the Court granted Defendant's Motion for Reconsideration and allowed him to amend his Section 2255 Motion. (D.I. 88). Subsequently, Defendant

filed an Amended Section 2255 Motion (D.I. 89), which is the subject of the instant Memorandum Opinion.

By his Amended Section 2255 Motion, Defendant alleges that his counsel provided ineffective assistance at trial and that his sentence violates the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). The Government has responded to the Amended Section 2255 Motion with an Amended Answer (D.I. 91), and Defendant has filed an Amended Reply (D.I. 93). Accordingly, Defendant's Section 255 Motion is fully briefed and ripe for the Court's review.

DISCUSSION

I. Whether An Evidentiary Hearing Is Required To Address Defendant's Claims

Pursuant to Rule 8(a) of the Rules Governing Section 2255 Proceedings, the Court should consider whether an evidentiary hearing is required in this case. After a review of Defendant's Motion, the Government's response, and the record in this case, the Court finds that an evidentiary hearing is not required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings. The Court concludes that it can fully evaluate the issues presented by Defendant on the record before it. Government of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir.1989) (holding that evidentiary hearing is not required where motion and record conclusively show movant is not entitled to relief and that decision to order hearing is committed to sound discretion of

district court), appeal after remand, 904 F.2d 694 (3d Cir.1990), cert. denied, 500 U.S. 954 (1991); Soto v. United States, 369 F. Supp. 232, 241-42 (E.D. Pa. 1973) (holding that crucial inquiry in determining whether to hold a hearing is whether additional facts are required for fair adjudication), aff'd, 504 F.2d 1339. Accordingly, the Court will address each of Defendant's claims in turn.

II. Whether Defendant's Counsel Provided Ineffective Assistance At Trial

By his Section 2255 Motion, Defendant alleges that his trial counsel was constitutionally ineffective. Specifically, Defendant contends that trial counsel: (1) failed to act as an advocate for Defendant, and (2) failed to diligently investigate his case. With respect to his claim that trial counsel failed to act as an advocate on his behalf, Defendant contends that trial counsel failed to keep him informed about important decisions and developments in his case and denied him the right to appear in civilian clothes, rather than prison clothes, during trial. With respect to his claim that trial counsel diligently failed to investigate his case, Defendant contends that trial counsel failed to interview witnesses that Defendant told him about, failed to prepare any defense, and failed to file a response to the Government's motion in limine to exclude evidence of the improper sexual conduct of the Government's "star" witness, Michael Smith.

To succeed on an ineffective assistance of counsel claim, a defendant must satisfy the two-part test set forth by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, reh'g denied, 467 U.S. 1267 (1984). The first prong of the Strickland test requires a defendant to show that his or her counsel's errors were so egregious as to fall below an "objective standard of reasonableness." Id. at 687-88. In determining whether counsel's representation was objectively reasonable, "the court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. In turn, the defendant must "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound . . . strategy.'" Id. (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

Under the second prong of Strickland, the defendant must demonstrate that he or she was actually prejudiced by counsel's errors, meaning that there is a reasonable probability that, but for counsel's faulty performance, the outcome of the proceedings would have been different. Strickland, 466 U.S. at 692-94; Frey v. Fulcomer, 974 F.2d 348, 358 (3d Cir. 1992), cert. denied, 507 U.S. 954 (1993). To establish prejudice, the defendant must also show that counsel's errors rendered the proceeding fundamentally unfair or unreliable. Lockhart v. Fretwell, 506 U.S. 364, 369 (1993). Thus, a purely outcome determinative perspective is

inappropriate. Id.; Flamer v. State, 68 F.3d 710, 729 (3d Cir. 1995), cert. denied, 516 U.S. 1088 (1996).

After reviewing Defendant's claims in light of the record and the applicable law, the Court concludes that Defendant cannot establish that trial counsel's representation was objectively unreasonable. With respect to his claim that trial counsel failed keep him informed about important decisions and developments in his case, Defendant fails to identify any decisions or developments that were withheld from him. As the Third Circuit has recognized, "vague and conclusory allegations contained in a § 2255 petition may be disposed of without further investigation by the District Court." United States v. Thomas, 221 F.3d 430, 437 (3d Cir. 2000) (citing United States v. Dawson, 857 F.2d 923, 928 (3d Cir.1988)).

As for his claims that trial counsel failed to interview witnesses, prepare a defense and respond to the Government's motion in limine concerning the sexual misconduct of Michael Smith, the Court cannot conclude, in the circumstance of this case, that trial counsel's performance fell outside the range of reasonable conduct. The witnesses that Defendant contends trial counsel failed to interview are, by Defendants' own account, witnesses who would have provided evidence to impeach the credibility of the Government's witness, Michael Smith. However, the record indicates that trial counsel vigorously cross-examined

Mr. Smith and tried to impeach him on various grounds, including that Mr. Smith received \$12,000 for his cooperation with the Government, drove and owned a Mercedes and a Volvo, had ready access to drugs, and did not follow the DEA's directions. It was also brought out on direct examination that Mr. Smith's relationship with the DEA was terminated after he plotted to steal from another cooperating witness and that he had a long list of prior convictions, as well as pending state criminal charges. In addition to this credibility-attacking evidence, trial counsel also pointed out various discrepancies with regard to Mr. Smith's testimony, thereby attempting to further impeach his testimony.

Defendant contends that trial counsel's decision not to present any witnesses for the defense and not to interview the witnesses suggested by Defendant "leads to the conclusion that an investigation may not have been undertaken at all." (D.I. 90 at 15). However, In the context of defense counsel's duty to investigate, "'strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on the investigation.'" United States v. Gray, 878 F.2d 702, 710 (3d Cir.1989) (quoting Strickland, 466 U.S. at

690-91). Ineffective assistance cases rarely succeed under this deferential standard where counsel conducts an investigation and decides to discontinue it and not to call a particular witness involved in the investigation; however, a total failure by counsel to investigate constitutes ineffective assistance of counsel. Id. at 711 ("Where the deficiencies in counsel's performance are severe and cannot be characterized as the product of strategic judgment, ineffectiveness may be clear."). As discussed above, the witnesses that trial counsel failed to investigate would have provided further impeachment evidence against Mr. Smith. However, given that Mr. Smith was already impeached on several grounds, the Court cannot conclude that counsel's failure to investigate these additional impeachment witnesses constitutes ineffective assistance. Further, Defendant acknowledges that trial counsel filed and briefed pretrial motions, exchanged detailed letters with the prosecutors advocating for his client, argued during a pretrial hearing, prepared for and conducted a four-day trial, including extensive cross-examination of witnesses and presentation of legal arguments, argued objections to the presentence report and cross-examined witnesses and argued legal positions at the sentencing hearing. Trial counsel's conduct in this regard undercuts Defendant's assertions that trial counsel did not conduct any investigation into the case and "did not prepare any defense case

at all.” (D.I. 90 at 15). Accordingly, the Court concludes that trial counsel’s conduct was reasonable.

Further, the Court concludes that even if Defendant can show that counsel’s performance was deficient, Defendant cannot establish prejudice. To establish prejudice, a defendant must show that the particular errors alleged “actually had an adverse effect on the defense.” Strickland, 466 U.S. at 693. In assessing prejudice, the court “must consider the totality of the evidence before the judge or the jury.” Id. at 695. As the Third Circuit concluded on Defendant’s direct appeal, the evidence against Defendant was both compelling and clear. (D.I. 64 at 3). The testimony of the Government’s witness Mr. Smith was corroborated by the testimony of Agent Lutz, by surveillance, and by the recorded conversations between Defendant and Mr. Smith. In these circumstances, the Court is persuaded that Defendant could not be prejudiced by counsel’s alleged failure to develop further impeachment evidence against Mr. Smith, including the allegations of any improper sexual conduct of Mr. Smith.

Similarly, with regard to Defendant’s claim that his counsel deprived him of his right to wear civilian clothes, the Court is also not persuaded that counsel’s conduct prejudiced Defendant. While there is a discrepancy in the record concerning whether Defendant had a suit available to him, the Court concludes that this discrepancy is insufficient to establish ineffective

assistance of counsel. Even if trial counsel acted unreasonably in failing to obtain a suit for Defendant, Defendant cannot establish prejudice because the evidence of Defendant's guilt was overwhelming, and Defendant does not raise any challenges to that evidence. Given the strength of the evidence against Defendant, the Court is not persuaded that wearing prison garb resulted in any prejudice to Defendant. See e.g. Josey v. Roe, 2001 WL 868349, *1 (9th Cir. Aug. 1, 2001); Jackson v. Myers, 884 F.2d 582, 1989 WL 102027, * 1 (9th Cir. Aug. 28, 1989).

In sum, the Court concludes that Defendant cannot establish that his trial counsel acted unreasonably. The record contradicts Defendant's assertion that his trial counsel failed to investigate his case or mount a defense. Further, counsel's decision not to call additional witnesses to impeach Mr. Smith was reasonable in light of the other impeachment evidence brought out by both counsel on cross-examination and the prosecution on direct examination. Further, even if counsel's performance can be said to have been deficient with regard to his investigation and/or his conduct regarding Plaintiff's ability to wear civilian clothes, the Court concludes that Defendant cannot establish prejudice. The evidence of Plaintiff's guilt was both clear and compelling, and Defendant has not established that the proceedings were fundamentally unfair or that there is a reasonable probability that the outcome would have been

different. Accordingly, the Court concludes that Defendant cannot establish that his trial counsel was constitutionally ineffective.

III. Whether Defendant's Sentence Violated Appendi

Defendant next contends that his sentence violates the Supreme Court's decision in Appendi v. New Jersey, 530 U.S. 466 (2000). Defendant was sentenced to consecutive life sentences pursuant to 21 U.S.C. § 841(b)(1)(A) and (B). Defendant contends that this sentence should be vacated and he should be resentenced under 21 U.S.C. § 841(b)(1)(C), which carries a maximum penalty of thirty years imprisonment per count.

It appears to the Court, that Defendant couches his Appendi claim in two ways. First, Defendant argues that trial counsel was ineffective for failing to raise the constitutionality of Section 841(b)(1)(A) and (B). Second, Defendant raises a substantive Appendi claim that does not turn on the effectiveness of counsel. The Court will address each of Defendant's claims in turn.

A. Whether Counsel Was Ineffective For Failing To Raise The Constitutionality of Section 841(b)(1)(A) And (B)

Defendant contends that, in light of Appendi, Section 841 is unconstitutional on its face and that counsel was constitutionally ineffective for failing to press this argument. It is well-established that counsel cannot be considered ineffective for failing to raise a non-meritorious issue before

the trial court or on appeal. See e.g. United States v. Mannino, 212 F.3d 835, 840 (3d Cir. 2000); Harold v. Shannon, 2003 WL 22208736, *4 (E.D. Pa. Jul 22, 2003). The Third Circuit has considered and rejected the argument that 21 U.S.C. § 841 is facially unconstitutional because sentencing factors must now be treated as elements of the offense and proven beyond a reasonable doubt. U.S. v. Kelly, 272 F.3d 622, 623 (3d Cir. 2001). As the Third Circuit recognized in Kelly, “[e]very appellate court that has considered the issue has upheld its constitutionality.” Id. (collecting cases). Because the argument that Section 841 is unconstitutional in light of Apprendi lacks merit, the Court concludes that counsel was not ineffective for failing to raise this argument.

B. Whether Defendant Has Established A Substantive Claim Of An Apprendi Violation

Defendant next contends, as a substantive matter, that his sentence violates the Supreme Court’s ruling in Apprendi. Specifically, Defendant contends that the Indictment failed to allege any threshold drug amount in either count and the jury was not instructed as to threshold drug amounts. Because the issue of drug amount was decided by the Court at the sentencing hearing under a preponderance of the evidence standard by way of adoption of the presentence report, Defendant contends that his sentence violates Apprendi.

In response to Defendant’s argument, the Government

contends, as a threshold matter, that Defendant's claim is procedurally defaulted. It is undisputed that Defendant did not raise his Apprendi claim either at trial or on direct appeal. Accordingly, Defendant can only raise his claim if he can show cause for the procedural default and prejudice or that a miscarriage of justice will occur if the Court declines to consider his claim.¹

In this case, the Supreme Court's decision in Apprendi was not decided at the time of Defendant's trial. However, this fact alone is insufficient to establish cause. Rather, to establish cause in this context, the Defendant must show that his "constitutional claim is so novel that its legal basis [wa]s not reasonably available to counsel." Reed v. Ross, 468 U.S. 1, *16 (1984). In this case, the Court concludes that Defendant cannot establish cause on the basis of the novelty of his claim. In addition to the Defendant in Apprendi, other defendants pressed this issue, including Defendant's current counsel in another case (D.I. 90 at 26-29 & n.10). See e.g. United States v. Moss, 252 F.3d 993, 100-103 (8th Cir. 2001), cert. denied, 534 U.S. 1097 (2002); United States v. Chapple, 985 F.2d 729, 731 (3d Cir. 1993). Thus, the issue raised by Defendant was not so novel as

¹ Defendant makes no claim of actual innocence to excuse his procedural default.

to be unavailable to his trial and appellate counsel.²

Defendant also alleges cause based on the alleged ineffectiveness of his trial counsel in failing to raise an Apprendi-type objection at sentencing.³ However, to establish that trial counsel was ineffective, Defendant has to show that counsel's decision not to raise this issue was outside the range of reasonable professional assistance. Defendant cannot show that counsel's performance was constitutionally deficient in failing to raise the Apprendi-type issue because, even though the

² See also Narvarez v. United States, 2003 WL 21749638, *9 (S.D.N.Y. Jul. 29, 2003) (collecting cases).

³ The Government also contends that there is a default on appeal, because Defendant's appellate counsel failed to raise the Apprendi issue on direct appeal. As with trial counsel, an Apprendi-type issue was available to counsel prior to the Supreme Court's decision in Apprendi, which was handed down during the pendency of Defendant's appeal, but counsel failed to raise this issue. Defendant suggests that cause exists for any procedural default on appeal, because appellate counsel was ineffective in failing to bring the Apprendi decision to the attention of the Third Circuit once it was rendered by the Supreme Court. Although Defendant's appellate counsel could have raised the Apprendi issue in the Reply Brief or by supplemental briefing, see e.g. United States v. Baltas, 236 F.3d 27, 40-41 (1st Cir. 2001), cert. denied, 532 U.S. 1030 (2001) (allowing supplemental memorandum on Apprendi under Rule 28(j) where decision was brought to court's attention following oral argument); it is also likely that Defendant would have been precluded from pursuing the argument, because it was not raised in the opening brief. See e.g. Abdul-Akbar v. McKelvie, 239 F.3d 307, 316 (3d Cir. 2001); Ghana v. Holland, 226 F.3d 175, 180 (3d Cir. 2000); Kost v. Kozaliewski, 1 F.3d 176, 182 (3d Cir. 1993). Thus, the failure of Defendant's appellate counsel to raise the Apprendi issue once the Supreme Court decided the case, also cannot be said to have been outside the range of reasonable professional assistance. Accordingly, Defendant cannot establish cause to excuse his procedural default on appeal.

issue was not novel, the weight of the authority militated against raising such a challenge. Accordingly, counsel's decision not to raise a challenge to the drug quantity was still within the range of reasonable professional assistance, and therefore, Defendant cannot establish cause for his procedural default of the Apprendi claim.⁴ See Smith v. Murray, 477 U.S. 527, 535-536 (1986) (holding that cause for procedural default could not be established, because counsel was not ineffective for failing to raise claim supported by later case law, even though his claim had been "percolating in the lower courts for years at the time of his original appeal"); Murray v. Carrier, 477 U.S. 478, 486 (1986) (holding that "the mere fact that counsel failed to recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it, does not constitute cause for a procedural default."); Valenzuela v. United States, 244 F.3d 694, 700 (7th Cir. 2001) (recognizing that counsel is not constitutionally ineffective for failing to anticipate subsequent changes in the law); Sistrunk v. Vaughn, 96 F.3d 666, 671 (3d Cir. 1996).

However, even if Defendant can establish cause for his procedural default, the Court concludes that Defendant cannot establish prejudice. The Government presented overwhelming

⁴ See also McCoy v. United States, 266 F.3d 1245, 1258-1259 (11th Cir. 2001).

evidence, establishing beyond a reasonable doubt, the quantity of the drugs involved in Defendant's two offenses. Defendant's drug transactions were recorded and monitored by the DEA. During these recordings, Defendant also made reference to the amount of cocaine he would be providing to Smith to distribute, and the amount was subsequently identified by lab testing. (D.I. 72 at B-77-B97, B111-B113, B128-B155, B186-B200, B276-B326, B393-B394, B418-419, B465-466, B489-B497, B531-B533, B567, B575-B585, B609-B610). Further, Defendant has not challenged any of this evidence, and therefore, the Court concludes that a reasonable jury would not have reached a different conclusion than the Court reached as to the quantity of drugs involved in the offenses. See e.g. United States v. Pettigrew, 346 F.3d 1139, 1146 (D.D.C. 2003) (holding that where evidence of drug quantity was overwhelming, naked speculation that jury would have decided issue differently than judge is insufficient to establish prejudice).

Moreover, the Court also concludes that even if Defendant could establish an Apprendi error, the error would not have entitled Defendant to further relief on direct appeal, and therefore, for this additional reason, Defendant cannot establish prejudice on collateral review.⁵ See United States v. Bailey,

⁵ Defendant contends that it is inappropriate for the Court to read Cotton into the Section 2255 prejudice analysis. However, it is well-established that the "cause and prejudice"

286 F.3d 1219, 1223 (10th Cir. 2002) (holding that because error would not have been reversible on direct appeal, there was no prejudice under higher standard required to obtain collateral relief); United States v. Smith, 241 F.3d 546, 549 (7th Cir. 2001) (same); United States v. Cornish, 1998 WL 761855, *3 (E.D. Pa. Oct. 28, 1998) (same). On direct appeal, an Apprendi error is reviewed under the plain error standard of review, and therefore, the defendant must establish that the error seriously affected the fairness, integrity or public reputation of the judicial proceedings. Where, as here, the evidence is overwhelming that Defendant possessed a sufficient drug quantity to justify his sentence, the error cannot be said to have seriously affected the fairness, integrity or public reputation of the proceedings. United States v. Cotton, 535 U.S. 625, 633 (2002) (holding that omission of drug quantity from the indictment did not seriously affect the fairness, integrity or public reputation of judicial proceedings where evidence that conspiracy involved at least 50 grams of cocaine was "overwhelming" and "essentially uncontroverted"); United States v. Vazquez, 271 F.3d 93, 96, 101-102, 104-106 (3d Cir. 2001). Accordingly, the Court concludes that Defendant is not entitled

standard is a higher hurdle than the plain error standard. United States v. Frady, 456 U.S. 152, 166 (1982); United States v. Essig, 10 F.3d 968, 977 n. 26 (3d Cir. 1993); Bailey, 286 F.3d at 1223 (10th Cir. 2002). Accordingly, the failure to establish plain error is indicative of a lack of actual prejudice to excuse a procedural default.

to relief on his Apprendi claim.

IV. Whether A Certificate Of Appealability Should Issue

The Court may issue a certificate of appealability only if Defendant “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Under this standard, the defendant must “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). When a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, the defendant must demonstrate that reasonable jurists would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” Id.

In this case, Defendant’s claims are either procedurally barred from federal habeas review or substantively non-meritorious. Accordingly, the Court has concluded that Defendant is not entitled to relief, and the Court is not convinced that

reasonable jurists would debate otherwise. Because Defendant has not made a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability.

CONCLUSION

For the reasons discussed, Defendant's Amended Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody will be denied.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Criminal Action No. 99-7-JJF
	:	
v.	:	Civil Action No. 02-140-JJF
	:	
WILLIAM FRAZIER,	:	
	:	
Defendant.	:	

ORDER

At Wilmington this 7th day of April 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. William Frazier's Amended Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255 (D.I. 89) is DENIED.

2. Because the Court finds that Defendant has failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE